

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Ralph Anderson, et al. Art Unit 1731
Serial No. 10/039,236
Filed December 31, 2001
Confirmation No. 7312
For METHOD FOR REDUCING UNDESIRABLE ODORS GENERATED FROM PAPER
HAND TOWELS

March 14, 2007

TO THE COMMISSIONER FOR PATENTS,

SIR:

LETTER TO PATENT AND TRADEMARK OFFICE

In response to the Notice of Allowance dated January 8, 2007, in the above-referenced patent application, applicants respectfully request reconsideration of the patent term adjustment determination. Pursuant to 37 CFR §1.705(b) and/or (d), applicants submit the following statement of facts in support of this request for reconsideration.

The application was filed on December 31, 2001. The Office issued a Notice of Missing Parts on February 7, 2002, and applicants responded to the Notice of Missing Parts on May 31, 2002, which is twenty-four **(24)** days more than the three-month period for reply.

The Office issued an Office action on March 17, 2003. Applicants responded to this action on June 16, 2003, which is within the three month period for reply. The Office issued a Notice of Abandonment on November 3, 2003 for failure to timely reply to the March 17, 2003 Office action, and applicants filed a Petition to Withdraw a Holding of Abandonment on November 6, 2003.

Applicants' petition was granted on March 1, 2004. According to the Patent Application Information Retrieval (PAIR) database, the response to the March 17, 2003 Office action (hereinafter

"Amendment A") was given a submission date of February 18, 2004. The Office then issued a Notice of Non-Compliant Amendment on April 6, 2004, stating that Amendment A did not comply with the requirements of 37 C.F.R. §1.121, as amended on June 30, 2003 (effective date July 30, 2003). Applicants filed a response to the Notice of Non-Compliant Amendment on April 15, 2004.

According to the PAIR database there was applicant delay of two hundred forty-six (246) days, stretching from the day after the three month period for reply to the March 17, 2003 action, to February 18, 2004, the date which the Office has accorded as the submission date of Amendment A. The PAIR database has also indicated that there was applicant delay of fifty-seven (57) days, stretching from the date after the filing date the Office accorded Amendment A (February 18, 2004) to the date the response to the Notice of Non-Compliant Amendment was filed (April 15, 2004).

It thus appears that the Office is considering Amendment A as a submission of a reply having an omission (see 37 C.F.R. §1.704(c)(7)). However, Applicants respectfully note that Amendment A, which was filed in response to the Office Action dated March 17, 2003, was originally submitted via facsimile on June 16, 2003, prior to the Office implementing the amended requirements of 37 CFR 1.121 (effective date July 30, 2003), which were the basis for the Notice of Non-Compliant Amendment. Thus, as of the date it was originally submitted (i.e., June 16, 2003), Amendment A was in compliance with 37 C.F.R. §1.121, and was not a submission of a reply having an omission pursuant to 37 C.F.R. §1.704(c)(7). The issuance of the Notice of Non-Compliant Amendment and applicants' subsequent response thereto thus directly resulted from Amendment A being given an improper filing date (i.e., February 18, 2004 instead of June 16, 2003). Since this occurred through no fault of applicants, it is respectfully submitted that applicants should not

be penalized with fifty-seven (57) days of applicant delay for submission of a reply to the Notice of Non-Compliant Amendment.

Additionally, as noted above, Amendment A was actually filed on June 16, 2003 (not February 18, 2004 as stated in PAIR), which is within the three month period for reply to the March 17, 2003 Office action. As such, it is respectfully submitted that applicants should not be penalized with two hundred forty-six (246) days of applicant delay for the filing of Amendment A.

In this regard, it is noted that the February 18, 2004 submission date for Amendment A set forth in PAIR was actually the fifth time applicants had submitted Amendment A. Specifically, Amendment A (originally filed on June 16, 2003) was resubmitted via facsimile on July 30, 2003 after Applicants noticed on PAIR that Amendment A had not been entered. On November 3, 2003, Applicants received a Notification of Abandonment for failure to timely file a proper reply to the Office Action. In response, Applicants again resubmitted Amendment A on November 6, 2003 with the Petition Requesting Withdrawal of the Holding of Abandonment of a Patent Application Under 37 C.F.R. §1.181. Again, Applicants checked PAIR and noticed that Amendment A had not been entered. As such, Applicants resubmitted Amendment A on January 20, 2004. Subsequently, Applicants checked PAIR, and after noticing no change in the status of the Application, Applicants contacted Examiner Halpern by telephone. In response to the telephone conference with Examiner Halpern, Applicants resubmitted Amendment A on February 18, 2004. These facts were set forth in the response to the Notice of Non-Compliant Amendment.

In light of these facts, applicants submit that there was no applicant delay for the filing of Amendment A and the response to the Notice of Non-Compliant Amendment.

Furthermore, applicants submit that there was in fact Office delay of two hundred seventy **(270)** days, stretching from the day

after the date that is four months from the date Amendment A was filed to the day the subsequent Office action was mailed (July 12, 2004).

The Office issued another Office action on May 11, 2005. Applicants responded to this action on August 8, 2005, which is within three months of the mailing date of the Office action. A supplemental Information Disclosure Statement was filed on September 26, 2005. According to the PAIR database, there was applicant delay of forty-nine (49) days, stretching from the day after the response to the May 11, 2005 Office action was filed (i.e., August 8, 2005) to the day the supplemental Information Disclosure Statement was filed (i.e., September 26, 2005).

The Office also issued an Office action on October 31, 2005. Applicants responded to this action on January 25, 2006, which is within three months of the mailing date of the Office action. A supplemental Information Disclosure Statement was filed on February 20, 2006. According to the PAIR database, there was applicant delay of twenty-six (26) days, stretching from the day after the response to the October 31, 2005 Office action was filed (i.e., January 25, 2006) to the day the supplemental Information Disclosure Statement was filed (i.e., February 20, 2006).

It appears the Office is considering the supplemental information disclosure statements filed on September 26, 2005 and February 20, 2006 to be supplemental replies to the May 11, 2005 and October 31, 2005 Office actions, respectively. As established in 37 C.F.R. §1.704(c)(8), submission of a supplemental reply after a reply has been filed is a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. However, applicants respectfully submit that the supplemental information disclosure statements are not a supplemental replies, as mentioned in 37 C.F.R. §1.704(c)(8).

Initially, applicants note that the supplemental Information Disclosure Statements at issue were not submitted for purposes of supplementing an Office action response. Rather, these supplemental Information Disclosure Statements were submitted merely to report references of which applicants had become aware, in compliance with applicants duty of disclosure under 37 C.F.R. 1.97 and 1.98. It is thus respectfully submitted that applicants should not be penalized by losing patent term, simply because applicants were attempting to comply with the duty of disclosure under 37 C.F.R. 1.97 and 1.98.

Based on the above recited facts, the delay on the part of the Office was two hundred seventy **(270)** days. The delay on the part of Applicants was twenty-four **(24)** days. The result is a patent term adjustment of two hundred forty-six **(246)** days.

Applicants note that the Office delay set forth above was calculated under 37 C.F.R. §1.702(a). However, according to 37 C.F.R. §1.702(b), the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application as filed under 35 U.S.C. §111(a) (i.e., December 31, 2001), with the period of adjustment being the number of days in the period beginning on the day after the date that is three years after the filing date (i.e., December 31, 2004) and ending on the date a patent is issued. Although applicants do not yet know the date the application will issue, it is noted that the amount of Office delay calculated under 37 C.F.R. §1.702(b) will be more than two hundred seventy (270) days. As such, it is applicants' intention to request a correction of patent term adjustment, based on Office delay as calculated under 37 C.F.R. §1.702(b), once the application issues.

The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 19-1345. However, in view of the fact that the Office made a mistake in calculating the correct patent term adjustment, applicants respectfully request that the fee in connection with this request be waived.

Respectfully submitted,

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